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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,020	05/03/2001	Raymond E. Craft	GRD0135.US	5708

7590

08/14/2002

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EXAMINER

VU, STEPHEN A

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/848,020

Applicant(s)  
Craft et al

Examiner  
Stephen Vu

Art Unit  
3636



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 5/3/01 & 1/2/02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above, claim(s) 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on May 3, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 & 3 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn to the article of furniture, classified in class 297, subclass 284.1.
  - II. Claims 10-16, drawn to the air bladder system , classified in class 5, subclass 709.
  - III. Claims 17-18, drawn to the method, classified in class 29, subclass 11.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the lumbar support can be used without the need for the air bladder system. The subcombination has separate utility such as for supporting a seat bottom of a user.
3. Inventions Group I&II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

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§ 806.05(h)). In the instant case, the method of adjusting an air bladder system can be employed in various ways, and not restricted to the steps as claimed.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. Todd Taylor (#36,945) on July 16, 2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 10-18 have been withdrawn from further consideration by the examiner, 37 CAR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CAR<sup>F</sup> 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CAR<sup>F</sup> 1.48(b) and by the fee required under 37 CAR<sup>F</sup> 1.17(I).

***Drawings***

7. The drawings are objected to under 37 CAR<sup>F</sup> 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fluid line coupled to the air

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bladders in a series arrangement as stated in claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

8. Claims 2-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, line 2, the phrase “parallel and series” is indefinite and unclear, because it does not clearly define the metes and bounds of the relationship of the structural elements being claimed.

In claim 3, line 2, the word “parallel” is indefinite and unclear, because it does not clearly define the metes and bounds of the relationship of the structural elements being claimed.

Claim 9 appears to be written in an improper Markush format.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hand et al (#5,902,011) in view of Nissen.

Hand et al (#5,902,011) show an article of furniture (210) comprising a support (212) having a support surface (246), a plurality of air bladders (14), at least one fluid line coupling the air bladders together, and a single valve (34) fluidly coupled with at least one fluid line.

However, Hand et al do not disclose that the air bladder to have an expandable foam.

Nissen teaches a seat cushion comprising an open-celled compressible foam material. The cushion is self-inflating when the valve is open. An user can deflate the cushion and then close the valve to prevent further inflation of the cushion. It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to modify the bladders of Hande et al by enabling the bladders to have an expanded foam material to be self-inflating by an open valve, and then closing the valve to prevent further inflation as taught by Nissen. This modification would facilitate the process of inflating and deflating the bladders to accommodate an user's back.

*Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Colasanti, Suter, Johnson, Rivard, and Vanharanta are cited as showing similar types of article of furniture.

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Stephen Vu, whose telephone number is (703) 308-1378.



Stephen Vu  
Patent Examiner  
August 8, 2002



Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600